

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after the final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 9, 2011 has been entered.

Accordingly, claim 1 is amended, claims 3, 7-20, 27-36 are cancelled, and claims 1-2, 4-6, 21-26, 37-40 are pending and examined in this office action.

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet **within the range of 50 to 150 words**. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 recites the limitation "the location" and "the other end" in lines 7 and 16 respectively. There is insufficient antecedent basis for this limitation in the claim.
3. Claim 5 recites the limitation "the location" and "the other end" in lines 7 and 12 respectively. There is insufficient antecedent basis for this limitation in the claim.
4. Claim 6 recites the limitation "the location", "the juncture" and "the other end" in lines 11, 17 and 18 respectively. There is insufficient antecedent basis for this limitation in the claim.
5. Claim 24 recites the limitation "the trailing end" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-2, 4-6, 21-26, 37, 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ender (US Patent 4,467,793) in view of Hinze (WO 98/36699).

Ender discloses a longitudinally extending intrafocal plate (7, Fig. 7) capable of securing bone fractures, said intrafocal plate (7) comprising a flat, elongated intrafocal plate element (Fig., 2) having a surface at one end thereof defining a top and a bottom and a leading end (first end as for claim 21) and a trailing end (second end) (see modified Fig. 1 below); an intermediate location between the leading and trailing ends

(Fig. 1), wherein the second end is capable to overlay a fracture site and capable to prevent over reduction of the fracture site. After inserting the device of Ender into the bone, a longitudinally extending intrafocal resilient body element (4, Fig. 1) (col. 4, line 48) is connected to a tubular piece (8, Fig. 3) which is integral to the intrafocal plate element (7, Fig. 3), and wherein the tubular piece (8) can be considered as a part of the resilient body element (4), therefore the resilient body element (4) can be considered integral to or a single piece with the intrafocal plate element (7) adjacent to but spaced apart from the trailing end (second end) of the surface of the plate element (Fig. 1) so that the leading end of the surface of the plate element extends above the location at which the resilient body element is affixed to the surface of the plate element (Fig. 1) so that the body element forms an acute angle with the surface and extends generally in the lengthwise direction of the surface (Fig. 1). The resilient body element is orthogonal to the surface of the plate element according to a side elevation view (First plane) of the resilient body element (Fig. 1) and a substantially straight shape according to a top elevation view (second plane) of the resilient body element parallel to the bottom surface of the elongate plate element, wherein the body element has a first portion, a second portion, a third portion and a fourth portion (see modified Fig. 1 below). The second end of the plate element extends adjacent to a portion of the body element (4) and maintains the plate element proximate the fracture site; and so as to define an overhanging heel (see

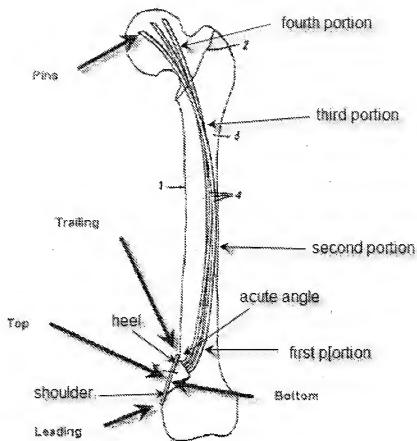
modified Fig.1 below) between the location at which the resilient body element is affixed to the surface of the plate element and the trailing end of the surface, the overhanging heel extending downwardly (Fig. 7) below the location at which the resilient body element is secured to the surface of the plate element, wherein the heel serves to help stabilize the fracture site, the resilient body element (4) being formed so as to extend generally in a lengthwise direction of the surface depending downwardly and outwardly from the bottom of the surface (Fig. 1) and wherein the other end of the resilient body element defines a pin element (see modified Fig. 1 below). A shoulder (see modified fig. 1 below) at one end at the juncture of the resilient body element and the surface and is defined between the surface and the one end of the body element connected thereto. The surface defines one or more apertures (9, Fig. 2) therein. The intrafocal plate including one or more screws (col. 5, lines 25-29) for insertion through one or more apertures (9) defined in the surface of the plate element to secure the plate element to the fracture site.

Ender fails to disclose that the resilient body element defining a substantially sinuous shape, wherein the first portion curves away from the plate element, the second portion curves toward the plate element and the third portion curves away from the plate element, and the fourth portion curves toward the plate element in the first plane.

Hinze teaches resilient body element (abstract) defining a substantially

sinuous shape according to a side elevation view (First plane) of the resilient body element (Fig. 1B), wherein the body element has a first portion (12) curves away from the plate element, a second portion (13) curves toward the plate element, a third portion (14) curves away from the plate element, and a fourth portion (15) curves toward the plate element for firmly braced within the medullary cavity and fully stabilizes the bone (abstract).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the first; second, third and fourth portions of the resilient body element of Ender to from a sinuous shape in view of Hinze for firmly braced within the medullary cavity and fully stabilizes the bone.



2. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ender (US Patent 4,467,793).

Ender discloses an intrafocal plate (7, Fig. 7) capable of securing bone fractures comprising: an elongate plate element defining a leading ending, a trailing end, an intermediate location between the leading and trailing ends, an overhanging heel toward the trailing end (see modified Fig. 1 above) capable to prevent reduction of a fracture and to stabilize the intrafocal plate when inserted

into a fracture site of a bone, a top surface, and a bottom surface (see modified Fig. 1 above) that is configured to engage an outer surface of a bone; and After inserting the device of Ender into the bone, a longitudinally extending intrafocal resilient body element (4, Fig. 1) (col. 4, line 48) is connected to a tubular piece (8, Fig. 3) which is integral to the intrafocal plate element (7, Fig. 3), and wherein the tubular piece (8) can be considered as a part of the resilient body element (4), therefore the resilient body element (4) can be considered integral to or a single piece with the intrafocal plate element (7) and extending downwardly from the bottom surface of the elongate plate element and in a lengthwise direction relative to the elongate plate element beyond a terminal end of the elongate plate element (Fig. 1), the resilient body extending from the intermediate location of the elongate plate element such that the overhanging heel of the elongate plate element is located between the resilient body element and the trailing end of the elongate plate element (see modified Fig. 1 above).

Response to Arguments

3. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that Ender does not disclose, teach, or suggest an intrafocal plate, but Ender teaches an intramedullary device. This very significant difference in structure and function would be well known to one skilled in the art such as an orthopaedic surgeon.

Examiner respectfully disagrees, since it is noted that "while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997); and since a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex pane Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Applicant further argues that Ender does not disclose, teach, or suggest the resilient body element is integral to or a single piece with the intrafocal plate element.

Examiner respectfully disagrees, since after inserting the device of Ender into bone, the resilient body element (4, Fig. 1) is connected to a tubular piece (8, Fig. 3) which is integral to the intrafocal plate element (7, Fig. 3), and the tubular piece (8) can be considered as a part of the resilient body element (4) therefore the resilient body element (4) can be considered integral to or a single piece with the intrafocal plate element (7).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh R Boles whose telephone number is (571)270-5537. The examiner can normally be reached on WORK SCHEDULE.

If attempts to reach the examiner by telephone are unsuccessful, **please contact the examiner's supervisor, Thomas Barrett, at 571-272-4746**. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If there are any inquiries that are not being addressed by first contacting the Examiner or the Supervisor, you may send an email inquiry to TC3700_Workgroup_D_Inquiries@uspto.gov. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SAMEH BOLES/

Examiner, Art Unit 3775